IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11033 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMENDRARAY V BAKSHI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI with MR PV HATHI for Petitioner

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/04/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, a retired City Civil Judge, has challenged the decision as communicated in the letters dated 28.2.1978 and 24.8.1983 (Annexure "I" and "J" respectively) denying the petitioner's claim for pension and also prayed for a direction to the respondent

to grant the petitioner pension.

2.1 The petitioner was enrolled as an advocate in the former State of Saurashtra and upon establishment of this Court, the petitioner was practicing as an advocate in this Court. On 6.4.1968 the petitioner was appointed as a Joint District Judge and continued to work as District and Sessions Judge till 24.8.1969. Thereafter the petitioner was appointed as a City Civil & Sessions Judge, Ahmedabad where he took charge on 1.9.1969. The petitioner retired at the age of 58 years on 30.11.1976. On 1.12.1976 the petitioner was appointed as a Member of the Gujarat Revenue Tribunal. On 1.7.1977 the petitioner was appointed as a member of the Gujarat Sales Tax Tribunal and then the petitioner was appointed as the President of that Tribunal from 1.1.1978 to 31.12.1980.

2.2 Since the petitioner had already put in more than 8 years service as a Judicial Officer and more than 12 years total service between 6.4.1968 and 31.12.1980 without any break in service, the petitioner submitted an application for grant of pension. On 7.5.1977, this Court on its administrative side recommended to the State Government to grant pension to the petitioner. However, on 28.2.1978, the State government rejected the petitioner's application. In the year year 1983, this Court on its administrative side again recommended to the State Government to grant pension to the petitioner, but by letter dated 24.8.1983 (Annexure "J"), the petitioner was informed that the State Government had rejected the said recommendation.

2.3 Thereafter in Special Civil Application No. 4786 of 1995 this Court directed the Government to grant pension to two similarly situated retired City Civil Judges as per the judgment dated 6/7.12.1995. The petitioner thereupon requested the State Government to grant the petitioner the pensionary benefits as per the aforesaid judgment and as per the pension orders passed by the State Government in case of other City Civil & Sessions Court Judges. However, the State Government did not pass any orders granting pension to the petitioner. Hence, this petition.

3. At the hearing of this petition, Mr JR Nanavati with Mr PV Hathi, learned counsel for the petitioners has submitted as under :-

(i) The only reason why the respondent-State Government has refused to grant pension to the petitioner is that the petitioner had not

completed 10 years service as a Judicial Officer, but in case of two other Judicial Officers who also retired as City Civil & sessions Judges (Mr DM Vasavada and Mr JM Thaker), the State Government granted them pension although they had not completed 10 years service. In case of Mr RM Christie and Mr AH Thaker who had also not completed 10 years service as Judicial Officers, this Court allowed Special Civil Application No. 4786 of 1995 and directed the State Government to give the said officers the same pensionary benefits as were extended to Mr DM Vasavada. It is, therefore, submitted that the petitioner is required to be extended the same benefits, otherwise, there will be violation of the petitioner's fundamental rights under Articles 14 and 16 of the Constitution.

(ii) Apart from the judicial service of 8 years, 7 months and 26 days, the petitioner had also put in further continuous service without any break under the State Government making it total service of 12 years, 8 months and 25 days and, therefore, the petitioner was entitled to get his services as a Judicial Officer tagged with the benefit of 5 years additional qualifying service as per the Government Resolution dated 9.3.1989 and also the reemployment period of 4 years and 1 month for the purpose of computation of his pension.

(iii) By Government Resolution dated 9.3.1989, the State Government decided that Judges who where appointed at the age of 49 years or older are required to be given the benefit of additional qualifying services so that the chances of members of the Bar accepting appointment to Judicial Office for receiving recurring pension are not restricted or adversely affected.

(iv) Strong reliance has been placed on the judgment of this Court in Special Civil Application No. 4786 of 1996 as confirmed in Letters Patent Appeal No. 106 of 1996.

4. On the other hand, Ms Manisha Lavkumar, learned AGP appearing for the State of Gujarat has opposed the petition and made the following submissions :-

(i) The petition suffers from delay, laches and acquiescence, as the petition is filed 15 years

after getting the negative reply of the State Government.

(ii) Since the petitioner had not completed 10 years service as a Judicial Officer, the petitioner was not entitled to receive any pension.

(iii) The Government Resolution dated 9.3.1989 was issued with prospective effect and not with retrospective effect and, therefore, only the officers retiring after 9.3.1989 are entitled to get the benefit of the said resolution, but the petitioner had retired long prior thereto and, therefore, the petitioner is not entitled to get the benefit of the said orders.

5. Having heard the learned counsel for the parties, it appears to the Court that the petitioner's case is squarely covered by the decision of this Court in Letters Patent Appeal No. 106 of 1996 in Special Civil Application No. 4786 of 1995. Before proceeding to refer to the reasons which appealed to this Court while granting the reliefs to Mr RM Christie and Mr AH Thaker, it is also necessary to refer to the relevant service particulars of Mr DM Vasavada and Mr JM Thaker in whose cases the State Government had already passed orders granting pension without any judicial intervention. The service particulars of the said four Judicial Officers and of the petitioner are as under :-

Name of the Officer	Date of joining	Date of retirement as City Civil Judge
Mr DM Vasavada	01.05.1980	31.08.1988
Mr JM Thaker	18.06.1979	30.04.1987
Mr RM Christie	03.03.1980	31.01.1988
Mr AH Thaker	1979	31.03.1986
Mr HV Bakshi (Petitioner)	06.04.1968	30.11.1976

A bare perusal of the above particulars indicates that all the judicial officers had put in less than 10 years judicial service and all of them had retired on superannuation before issuance of the Government Resolution dated 9.3.1989. Hence, the contention sought

to be raised by the learned AGP in this petition for the first time that the Government Resolution dated 9.3.1989 was only prospective and could not be applied in case of judicial officers who retired prior to 8.3.1989 is not available to the State Government particularly when the pensionary benefits were given to Mr DM Vasavada and Mr JM Thaker without any judicial intervention though both of them had retired prior to 9.3.1989 and had put in less than 10 years judicial service.

6. In paragraph 11 of the aforesaid judgment dated 6/7.12.1995 delivered by the learned Single Judge certain facts about the service particulars of Mr DM Vasavada are noted which read as under :-

> " As a matter of fact in the case of Mr DM Vasavada there was a break of around six months in the performance of his duty as Judge, the break was condoned and the reemployment came to be treated as continuous service with a maximum period of 20 years as pensionable period for service. Hence, the petitioner's case (Mr RM Christie) as also the case of Mr AH Thaker should be similarly treated by both the authorities."

After considering the submissions made on behalf of the State Government, the learned Single Judge observed that in view of the parity between the cases of M/s DM Vasavada and JM Thaker on one hand and M/s RM Christie and AH Thaker on the other hand, the Government ought to have accepted the recommendation of this Court on its administrative side and granted pensionary benefits to Mr Christie as well as to Mr AH Thakar. This Court also relied on the aforesaid Government Resolution dated 9.3.1989 for upholding the claim of Mr RM Christie and Mr AH Thakar for pensionary benefits. Even the argument of the learned AGP that the resolution cannot override the statutory provisions contained in Rule 284 of the BCSR was considered and rejected.

7. Having carefully gone through the aforesaid judgment rendered by the learned Single Judge and the judgment rendered by the Division bench to which I was a party, there is no room for doubt that the petitioner's case is similar to the case of Mr RM Christie and Mr AH Thaker. Hence, although the petitioner had put in less than 10 years service as a judicial officer, the petitioner was entitled to the benefit of the Government Resolution dated 9.3.1989. Apart from the fact that the petitioner had also put in further service of 4 years and 1 month during his reemployment by rendering services as

a Member of the Revenue Tribunal and also as a member of the Sales Tax Tribunal and subsequently as the President thereof, althroughout there was no break in the petitioner's service in this period of 12 years, 8 months and 25 days.

8. It is true that the petition was not filed soon after the petitioner was informed about the Government reply in 1983, but the Court is not inclined to accept the contention about delay in filing the petition in view of the following principle ennunciated by the Apex Court in the case of R.S. Deodar vs. State of Maharashtra, AIR 1974 SC 259 :-

> "It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to the others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

As already discussed above, on merits the State Government has no valid defence which can be sustained. The petition of Mr RM Christie was filed in 1995 after his retirement in 1988. It came to be allowed in December, 1995 and the Letters Patent Appeal was dismissed in April, 1996. Hence, the petitioner was rightly put to inquiries and agitated his claim. Hence, the Court is not inclined to dismiss the petition on the ground of delay. Still the Court proposes to take that aspect into account while moulding the final relief in as much as the Court does not propose to award any interest to the petitioner on the arrears of pensionary benefits for the period prior to the date of filing this petition.

9. The learned counsel for the petitioner has prayed for interest at the rate of 12% p.a. from the date of retirement.

The Court is, however, not inclined to award interest to the petitioner from the date of his

retirement as the petitioner had reitred way back in the year 1976. The Court considers that it would be just and proper to award interest to the petitioner only from the date of filing the petition. The question is as to what rate the interest should be awarded.

The learned counsel for the petitioner has pressed that the interest be awarded at the rate of 15% p.a. or at least at the rate of 12% p.a.

The learned AGP, however, submits that in view of the decision of the Apex Court in S. Kaushnuma Begum vs. New India Assurance Co. Ltd., AIR 2001 SC 485, the interest is required to be awarded only at the rate of 9% p.a.

Considering the aforesaid decision of the Apex Court, the Court considers that it would be reasonable to award interest at the rate of 9% p.a. only.

10. In view of the above discussion, this petition is allowed. The respondent is directed to grant the petitioner pensionary benefits. The impugned decisions as communicated in the letters dated 28.2.1978 and 24.8.1983 (Annexure "I" and "J" respectively) are quashed and set aside. It is hereby directed that the respondent shall give the petitioner similar treatment as has been given to Mr DM Vasavada in the matter of working out and grant of pension. All the retiral benefits payable to the petitioner including pension shall be computed within two months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier and the payment of arrears of pension and other retiral benefits shall be made within two months thereafter. The petitioner shall also be continued to be paid monthly pension as and when the same falls due. The petitioner shall be paid arrears of pension with interest at the rate of 9% p.a. from the date of filing of the petition till the date of payment. In case the payment is not made within the aforesaid stipulated time limit, the respondent shall be liable to pay interest at the rate of 15% p.a. from today till the date of payment.

10. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
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